

SECOND REGULAR SESSION

# SENATE BILL NO. 1069

92ND GENERAL ASSEMBLY

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INTRODUCED BY SENATORS GROSS AND GRIESHEIMER.

Read 1st time January 14, 2004, and ordered printed.

TERRY L. SPIELER, Secretary.

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## AN ACT

To repeal sections 386.020, 392.220, and 392.245, RSMo, and to enact in lieu thereof four new sections relating to telecommunications companies.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 386.020, 392.220, and 392.245, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 386.020, 392.220, 392.245, and 392.405, to read as follows:

386.020. As used in this chapter, the following words and phrases mean:

(1) "Alternative local exchange telecommunications company", a local exchange telecommunications company certified by the commission to provide basic or nonbasic local telecommunications service or switched exchange access service, or any combination of such services, in a specific geographic area subsequent to December 31, 1995;

(2) "Alternative operator services company", any certificated interexchange telecommunications company which receives more than forty percent of its annual Missouri intrastate telecommunications service revenues from the provision of operator services pursuant to operator services contracts with traffic aggregators;

(3) "Basic interexchange telecommunications service", includes, at a minimum, two-way switched voice service between points in different local calling scopes as determined by the commission and shall include other services as determined by the commission by rule upon periodic review and update;

(4) "Basic local telecommunications service", two-way switched voice service within a local calling scope as determined by the commission comprised of any of the following services and their recurring and nonrecurring charges:

(a) Multiparty, single line, including installation, touchtone dialing, and any applicable mileage or zone charges;

**EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

(b) Assistance programs for installation of, or access to, basic local telecommunications services for qualifying economically disadvantaged or disabled customers or both, including, but not limited to, lifeline services and link-up Missouri services for low-income customers or dual-party relay service for the hearing impaired and speech impaired;

(c) Access to local emergency services including, but not limited to, 911 service established by local authorities;

(d) Access to basic local operator services;

(e) Access to basic local directory assistance;

(f) Standard intercept service;

(g) Equal access to interexchange carriers consistent with rules and regulations of the Federal Communications Commission;

(h) One standard white pages directory listing.

Basic local telecommunications service does not include optional toll free calling outside a local calling scope but within a community of interest, available for an additional monthly fee or the offering or provision of basic local telecommunications service at private shared-tenant service locations;

(5) "Cable television service", the one-way transmission to subscribers of video programming or other programming service and the subscriber interaction, if any, which is required for the selection of such video programming or other programming service;

(6) "Carrier of last resort", any telecommunications company which is obligated to offer basic local telecommunications service to all customers who request service in a geographic area defined by the commission and cannot abandon this obligation without approval from the commission;

**(7) "Central office based broadband service", the placement of a digital subscriber line access multiplexer, or similar equipment, in a central office which permits transmission, to or from the Internet, in excess of one hundred forty-four kilobits per second, over all copper wires to customers located within approximately fourteen thousand cable feet of the central office;**

(8) "Commission", the "Public Service Commission" hereby created;

[(8)] (9) "Commissioner", one of the members of the commission;

[(9)] (10) "Competitive telecommunications company", a telecommunications company which has been classified as such by the commission pursuant to section 392.361, RSMo;

[(10)] (11) "Competitive telecommunications service", a telecommunications service which has been classified as such by the commission pursuant to section 392.361, RSMo, or which has become a competitive telecommunications service pursuant to section 392.370, RSMo;

[(11)] (12) "Corporation" includes a corporation, company, association and joint stock

association or company;

[(12)] (13) "Customer-owned pay telephone", a privately owned telecommunications device that is not owned, leased or otherwise controlled by a local exchange telecommunications company and which provides telecommunications services for a use fee to the general public;

[(13)] (14) "Effective competition" shall be determined by the commission based on:

(a) The extent to which services are available from alternative providers in the relevant market;

(b) The extent to which the services of alternative providers are functionally equivalent or substitutable at comparable rates, terms and conditions;

(c) The extent to which the purposes and policies of chapter 392, RSMo, including the reasonableness of rates, as set out in section 392.185, RSMo, are being advanced;

(d) Existing economic or regulatory barriers to entry; and

(e) Any other factors deemed relevant by the commission and necessary to implement the purposes and policies of chapter 392, RSMo;

[(14)] (15) "Electric plant" includes all real estate, fixtures and personal property operated, controlled, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light, heat or power; and any conduits, ducts or other devices, materials, apparatus or property for containing, holding or carrying conductors used or to be used for the transmission of electricity for light, heat or power;

[(15)] (16) "Electrical corporation" includes every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, other than a railroad, light rail or street railroad corporation generating electricity solely for railroad, light rail or street railroad purposes or for the use of its tenants and not for sale to others, owning, operating, controlling or managing any electric plant except where electricity is generated or distributed by the producer solely on or through private property for railroad, light rail or street railroad purposes or for its own use or the use of its tenants and not for sale to others;

[(16)] (17) "Exchange", a geographical area for the administration of telecommunications services, established and described by the tariff of a telecommunications company providing basic local telecommunications service;

[(17)] (18) "Exchange access service", a service provided by a local exchange telecommunications company which enables a telecommunications company or other customer to enter and exit the local exchange telecommunications network in order to originate or terminate interexchange telecommunications service;

[(18)] (19) "Gas corporation" includes every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers

appointed by any court whatsoever, owning, operating, controlling or managing any gas plant operating for public use under privilege, license or franchise now or hereafter granted by the state or any political subdivision, county or municipality thereof;

[(19)] **(20)** "Gas plant" includes all real estate, fixtures and personal property owned, operated, controlled, used or to be used for or in connection with or to facilitate the manufacture, distribution, sale or furnishing of gas, natural or manufactured, for light, heat or power;

[(20)] **(21)** "Heating company" includes every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers, appointed by any court whatsoever, owning, operating, managing or controlling any plant or property for manufacturing and distributing and selling, for distribution, or distributing hot or cold water, steam or currents of hot or cold air for motive power, heating, cooking, or for any public use or service, in any city, town or village in this state; provided, that no agency or authority created by or operated pursuant to an interstate compact established pursuant to section 70.370, RSMo, shall be a heating company or subject to regulation by the commission;

[(21)] **(22)** "High-cost area", a geographic area, which shall follow exchange boundaries and be no smaller than an exchange nor larger than a local calling scope, where the cost of providing basic local telecommunications service as determined by the commission, giving due regard to recovery of an appropriate share of joint and common costs as well as those costs related to carrier of last resort obligations, exceeds the rate for basic local telecommunications service found reasonable by the commission;

[(22)] **(23)** "Incumbent local exchange telecommunications company", a local exchange telecommunications company authorized to provide basic local telecommunications service in a specific geographic area as of December 31, 1995, or a successor in interest to such a company;

[(23)] **(24)** "Interexchange telecommunications company", any company engaged in the provision of interexchange telecommunications service;

[(24)] **(25)** "Interexchange telecommunications service", telecommunications service between points in two or more exchanges;

[(25)] **(26)** "InterLATA", interexchange telecommunications service between points in different local access and transportation areas;

[(26)] **(27)** "IntraLATA", interexchange telecommunications service between points within the same local access and transportation area;

[(27)] **(28)** "Light rail" includes every rail transportation system in which one or more rail vehicles are propelled electrically by overhead catenary wire upon tracks located substantially within an urban area and are operated exclusively in the transportation of passengers and their baggage, and including all bridges, tunnels, equipment, switches, spurs,

tracks, stations, used in connection with the operation of light rail;

[(28)] **(29)** "Line" includes route;

[(29)] **(30)** "Local access and transportation area" or "LATA", contiguous geographic area approved by the U.S. District Court for the District of Columbia in *United States v. Western Electric*, Civil Action No. 82-0192 that defines the permissible areas of operations for the Bell Operating companies;

[(30)] **(31)** "Local exchange telecommunications company", any company engaged in the provision of local exchange telecommunications service. A local exchange telecommunications company shall be considered a "large local exchange telecommunications company" if it has at least one hundred thousand access lines in Missouri and a "small local exchange telecommunications company" if it has less than one hundred thousand access lines in Missouri;

[(31)] **(32)** "Local exchange telecommunications service", telecommunications service between points within an exchange;

[(32)] **(33)** "Long-run incremental cost", the change in total costs of the company of producing an increment of output in the long run when the company uses least cost technology, and excluding any costs that, in the long run, are not brought into existence as a direct result of the increment of output. The relevant increment of output shall be the level of output necessary to satisfy total current demand levels for the service in question, or, for new services, demand levels that can be demonstrably anticipated;

[(33)] **(34)** "Municipality" includes a city, village or town;

[(34)] **(35)** "Nonbasic telecommunications services" shall be all regulated telecommunications services other than basic local and exchange access telecommunications services, and shall include the services identified in paragraphs (d) and (e) of subdivision (4) of this section. Any retail telecommunications service offered for the first time after August 28, 1996, shall be classified as a nonbasic telecommunications service, including any new service which does not replace an existing service;

[(35)] **(36)** "Noncompetitive telecommunications company", a telecommunications company other than a competitive telecommunications company or a transitionally competitive telecommunications company;

[(36)] **(37)** "Noncompetitive telecommunications service", a telecommunications service other than a competitive or transitionally competitive telecommunications service;

[(37)] **(38)** "Operator services", operator-assisted interexchange telecommunications service by means of either human or automated call intervention and includes, but is not limited to, billing or completion of calling card, collect, person-to-person, station-to-station or third number billed calls;

[(38)] **(39)** "Operator services contract", any agreement between a traffic aggregator and a certificated interexchange telecommunications company to provide operator services

at a traffic aggregator location;

[(39)] (40) "Person" includes an individual, and a firm or copartnership;

[(40)] (41) "Private shared tenant services" includes the provision of telecommunications and information management services and equipment within a user group located in discrete private premises as authorized by the commission by a commercial-shared services provider or by a user association, through privately owned customer premises equipment and associated data processing and information management services and includes the provision of connections to the facilities of local exchange telecommunications companies and to interexchange telecommunications companies;

[(41)] (42) "Private telecommunications system", a telecommunications system controlled by a person or corporation for the sole and exclusive use of such person, corporation or legal or corporate affiliate thereof;

[(42)] (43) "Public utility" includes every pipeline corporation, gas corporation, electrical corporation, telecommunications company, water corporation, heat or refrigerating corporation, and sewer corporation, as these terms are defined in this section, and each thereof is hereby declared to be a public utility and to be subject to the jurisdiction, control and regulation of the commission and to the provisions of this chapter;

[(43)] (44) "Railroad" includes every railroad and railway, other than street railroad or light rail, by whatsoever power operated for public use in the conveyance of persons or property for compensation, with all bridges, ferries, tunnels, equipment, switches, spurs, tracks, stations, real estate and terminal facilities of every kind used, operated, controlled or owned by or in connection with any such railroad;

[(44)] (45) "Railroad corporation" includes every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, owning, holding, operating, controlling or managing any railroad or railway as defined in this section, or any cars or other equipment used thereon or in connection therewith;

[(45)] (46) "Rate", every individual or joint rate, fare, toll, charge, reconsigning charge, switching charge, rental or other compensation of any corporation, person or public utility, or any two or more such individual or joint rates, fares, tolls, charges, reconsigning charges, switching charges, rentals or other compensations of any corporation, person or public utility or any schedule or tariff thereof;

[(46)] (47) "Resale of telecommunications service", the offering or providing of telecommunications service primarily through the use of services or facilities owned or provided by a separate telecommunications company, but does not include the offering or providing of private shared tenant services;

[(47)] (48) "Service" includes not only the use and accommodations afforded consumers or patrons, but also any product or commodity furnished by any corporation,

person or public utility and the plant, equipment, apparatus, appliances, property and facilities employed by any corporation, person or public utility in performing any service or in furnishing any product or commodity and devoted to the public purposes of such corporation, person or public utility, and to the use and accommodation of consumers or patrons;

[(48)] **(49)** "Sewer corporation" includes every corporation, company, association, joint stock company or association, partnership or person, their lessees, trustees or receivers appointed by any court, owning, operating, controlling or managing any sewer system, plant or property, for the collection, carriage, treatment, or disposal of sewage anywhere within the state for gain, except that the term shall not include sewer systems with fewer than twenty-five outlets;

[(49)] **(50)** "Sewer system" includes all pipes, pumps, canals, lagoons, plants, structures and appliances, and all other real estate, fixtures and personal property, owned, operated, controlled or managed in connection with or to facilitate the collection, carriage, treatment and disposal of sewage for municipal, domestic or other beneficial or necessary purpose;

[(50)] **(51)** "Street railroad" includes every railroad by whatsoever type of power operated, and all extensions and branches thereof and supplementary facilities thereto by whatsoever type of vehicle operated, for public use in the conveyance of persons or property for compensation, mainly providing local transportation service upon the streets, highways and public places in a municipality, or in and adjacent to a municipality, and including all cars, buses and other rolling stock, equipment, switches, spurs, tracks, poles, wires, conduits, cables, subways, tunnels, stations, terminals and real estate of every kind used, operated or owned in connection therewith but this term shall not include light rail as defined in this section; and the term "street railroad" when used in this chapter, shall also include all motor bus and trolley bus lines and routes and similar local transportation facilities, and the rolling stock and other equipment thereof and the appurtenances thereto, when operated as a part of a street railroad or trolley bus local transportation system, or in conjunction therewith or supplementary thereto, but such term shall not include a railroad constituting or used as part of a trunk line railroad system and any street railroad as defined above which shall be converted wholly to motor bus operation shall nevertheless continue to be included within the term "street railroad" as used herein;

[(51)] **(52)** "Telecommunications company" includes telephone corporations as that term is used in the statutes of this state and every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, owning, operating, controlling or managing any facilities used to provide telecommunications service for hire, sale or resale within this state;

[(52)] **(53)** "Telecommunications facilities" includes lines, conduits, ducts, poles,

wires, cables, crossarms, receivers, transmitters, instruments, machines, appliances and all devices, real estate, easements, apparatus, property and routes used, operated, controlled or owned by any telecommunications company to facilitate the provision of telecommunications service;

**[(53)] (54)** "Telecommunications service", the transmission of information by wire, radio, optical cable, electronic impulses, or other similar means. As used in this definition, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols. Telecommunications service does not include:

(a) The rent, sale, lease, or exchange for other value received of customer premises equipment except for customer premises equipment owned by a telephone company certificated or otherwise authorized to provide telephone service prior to September 28, 1987, and provided under tariff or in inventory on January 1, 1983, which must be detariffed no later than December 31, 1987, and thereafter the provision of which shall not be a telecommunications service, and except for customer premises equipment owned or provided by a telecommunications company and used for answering 911 or emergency calls;

(b) Answering services and paging services;

(c) The offering of radio communication services and facilities when such services and facilities are provided under a license granted by the Federal Communications Commission under the commercial mobile radio services rules and regulations;

(d) Services provided by a hospital, hotel, motel, or other similar business whose principal service is the provision of temporary lodging through the owning or operating of message switching or billing equipment solely for the purpose of providing at a charge telecommunications services to its temporary patients or guests;

(e) Services provided by a private telecommunications system;

(f) Cable television service;

(g) The installation and maintenance of inside wire within a customer's premises;

(h) Electronic publishing services; or

(i) Services provided pursuant to a broadcast radio or television license issued by the Federal Communications Commission;

**[(54)] (55)** "Telephone cooperative", every corporation defined as a telecommunications company in this section, in which at least ninety percent of those persons and corporations subscribing to receive local telecommunications service from the corporation own at least ninety percent of the corporation's outstanding and issued capital stock and in which no subscriber owns more than two shares of the corporation's outstanding and issued capital stock;

**[(55)] (56)** "Traffic aggregator", any person, firm, partnership or corporation which furnishes a telephone for use by the public and includes, but is not limited to, telephones located in rooms, offices and similar locations in hotels, motels, hospitals, colleges,



universities, airports and public or customer-owned pay telephone locations, whether or not coin operated;

[(56)] (57) "Transitionally competitive telecommunications company", an interexchange telecommunications company which provides any noncompetitive or transitionally competitive telecommunications service, except for an interexchange telecommunications company which provides only noncompetitive telecommunications service;

[(57)] (58) "Transitionally competitive telecommunications service", a telecommunications service offered by a noncompetitive or transitionally competitive telecommunications company and classified as transitionally competitive by the commission pursuant to section 392.361 or 392.370, RSMo;

[(58)] (59) "Water corporation" includes every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees, or receivers appointed by any court whatsoever, owning, operating, controlling or managing any plant or property, dam or water supply, canal, or power station, distributing or selling for distribution, or selling or supplying for gain any water;

[(59)] (60) "Water system" includes all reservoirs, tunnels, shafts, dams, dikes, headgates, pipes, flumes, canals, structures and appliances, and all other real estate, fixtures and personal property, owned, operated, controlled or managed in connection with or to facilitate the diversion, development, storage, supply, distribution, sale, furnishing or carriage of water for municipal, domestic or other beneficial use.

392.220. 1. Every telecommunications company shall print and file with the commission schedules showing the rates, rentals and charges for service of each and every kind by or over its facilities between points in this state and between each point upon its facilities and all points upon all facilities leased or operated by it and between each point upon its facilities or upon any facility leased or operated by it and all points upon the line of any other telecommunications company whenever a through service or joint rate shall have been established between any two points. If no joint rate over through facilities has been established, the several companies joined over such through facilities shall file with the commission the separately established rates and charges applicable where through service is afforded. Such schedule shall plainly state the places between which telecommunications service will be rendered and shall also state separately all charges and all privileges or facilities granted or allowed and any rules or regulations or forms of contract which may in any wise change, affect or determine any or the aggregate of the rates, rentals or charges for the service rendered. Such schedule shall be plainly printed and kept open to public inspection. The commission shall have the power to prescribe the form of every such schedule and may from time to time prescribe, by order, changes in the form thereof. The commission shall also have power to establish rules and regulations for keeping such schedules open to public inspection and may from time to time modify the same. Every

telecommunications company shall file with the commission as and when required by it a copy of any contract, agreement or arrangement in writing with any other telecommunications company or with any other corporation, association or person relating in any way to the construction, maintenance or use of telecommunications facilities or service by or rates and charges over or upon any facilities.

2. Unless the commission otherwise orders, and except for the rates charged by a telephone cooperative for providing telecommunications service within an exchange or within a local calling scope as determined by the commission other than the rates for exchange access service, no change shall be made in any rate, charge or rental, or joint rate, charge or rental which shall have been filed by a telecommunications company in compliance with the requirements of sections 392.190 to 392.530, except after **[thirty] twenty** days' notice to the commission, which notice shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rate, charge or rental shall go into effect; and all proposed changes shall be shown by filing new schedules or shall be plainly indicated upon the schedules filed and in force at the time and kept open to public inspection. The commission for good cause shown may allow changes in rates, charges or rentals without requiring the **[thirty] twenty** days' notice, under such conditions as it may prescribe. All such changes shall be immediately indicated upon its schedules by such telecommunications company. No telecommunications company shall charge, demand, collect or receive a different compensation for any service rendered or to be rendered than the charge applicable to such service as specified in its schedule on file and in effect at that time. No telecommunications company shall refund or remit directly or indirectly any portion of the rate or charge so specified, nor extend to any person or corporation any form of contract or agreement, or any rule or regulation, or any privilege or facility other than such privileges and facilities as are contemplated by sections 392.200, 392.245, and 392.455, except such as are specified in its schedule filed and in effect at the time and regularly and uniformly extended to all persons and corporations under like circumstances for a like or substantially similar service.

3. No telecommunications company subject to the provisions of this law shall, directly or indirectly, give any free or reduced service, or any free pass or frank for the provision of telecommunications services between points within this state, except to its officers, employees, agents, surgeons, physicians, attorneys at law and their families; to persons or corporations exclusively engaged in charitable and eleemosynary work and ministers of religions; to officers and employees of other telegraph corporations and telephone corporations, railroad corporations and street railroad corporations; public education institutions, public libraries and not-for-profit health care institutions. This subsection shall not apply to state, municipal or federal contracts.

4. Any proposed rate or charge for any new telecommunications service which has not

previously been provided by a telecommunications company to its Missouri customers may be suspended by the commission for a period not to exceed sixty days from the proposed effective date of such proposed rate or charge. This subsection shall not be applicable to any new price or method of pricing for a service presently being offered by any telecommunications company to its Missouri customers. Upon proposing a rate or charge for a telecommunications service which has not previously been provided by a telecommunications company to its Missouri customers, the offeror must file with the commission its justification for considering such offering a new service and such other information as may be required by rule or regulation, and must identify that service as being noncompetitive, transitionally competitive or competitive. If the offeror is a noncompetitive or transitionally competitive telecommunications company and it proposes such service as a transitionally competitive or competitive telecommunications service, the telecommunications service shall be treated as a transitionally competitive telecommunications service until such time as the commission finally determines the appropriate classification. If the offeror is a competitive telecommunications company and it proposes such service as a competitive service, the competitive classification proposed by the offeror of the service shall apply until such time as the commission finally determines the appropriate classification. Such final determination by the commission of the appropriate classification of such service may be made by the commission after the end of the maximum sixty-day suspension period, but any such decision by the commission issued after the maximum sixty-day suspension period shall be prospective in nature. The commission shall expedite proceedings under this subsection in order to facilitate the rapid introduction of new telecommunications products and services into the marketplace.

5. Unless the commission otherwise orders, any change in rates or charges, or change in any classification or tariff resulting in a change in rates or charges, for any telephone cooperative shall be filed, on an informational basis, with the commission at least **[thirty]** **twenty** days prior to the date for implementation of such change. Nothing contained in this section shall be construed as conferring jurisdiction upon the commission over the rates charged by a telephone cooperative for providing telecommunications service within an exchange or within a local calling scope as determined by the commission, except for exchange access service.

6. If after notice and hearing, the commission determines that a telecommunications company has violated the requirements of section 392.200 or this section, it may revoke the certificate of service authority under which that telecommunications company operates and shall direct its general counsel to initiate an action under section 386.600, RSMo, to recover penalties from such telecommunications company in an amount not to exceed the revenues received as a result of such violation multiplied by three or the gross jurisdictional operating revenues of that company for the preceding twelve months, the provisions of section 386.570,

RSMo, notwithstanding.

392.245. 1. The commission shall have the authority to ensure that rates, charges, tolls and rentals for telecommunications services are just, reasonable and lawful by employing price cap regulation. As used in this chapter, "price cap regulation" shall mean establishment of maximum allowable prices for telecommunications services offered by an incumbent local exchange telecommunications company, which maximum allowable prices shall not be subject to increase except as otherwise provided in this section.

2. A large incumbent local exchange telecommunications company shall be subject to regulation under this section upon a determination by the commission that an alternative local exchange telecommunications company has been certified to provide basic local telecommunications service and is providing such service in any part of the large incumbent company's service area. A small incumbent local exchange telecommunications company may elect to be regulated under this section upon providing written notice to the commission if an alternative local exchange telecommunications company has been certified to provide basic local telecommunications service and is providing such service in any part of the small incumbent company's service area, and the incumbent company shall remain subject to regulation under this section after such election.

3. Except as otherwise provided in this section, the maximum allowable prices established for a company under subsection 1 of this section shall be those in effect on December thirty-first of the year preceding the year in which the company is first subject to regulation under this section. Tariffs authorized under subsection 9 of this section shall be phased in as provided under such tariffs as approved by the commission.

4. (1) Except as otherwise provided in subsections 8 and 9 of this section and section 392.248, the maximum allowable prices for exchange access and basic local telecommunications services of a small, incumbent local exchange telecommunications company regulated under this section shall not be changed for a period of twelve months after the date the company is subject to regulation under this section. Except as otherwise provided in subsections 8 and 9 of this section and section 392.248, the maximum allowable prices for exchange access and basic local telecommunications services of a large, incumbent local exchange telecommunications company regulated under this section shall not be changed prior to January 1, 2000. Thereafter, the maximum allowable prices for exchange access and basic local telecommunications services of an incumbent local exchange telecommunications company shall be annually changed by one of the following methods:

(a) By the change in the telephone service component of the Consumer Price Index (CPI-TS), as published by the United States Department of Commerce or its successor agency for the preceding twelve months; or

(b) Upon request by the company and approval by the commission, by the change in the Gross Domestic Product Price Index (GDP-PI), as published by the United States

Department of Commerce or its successor agency for the preceding twelve months, minus the productivity offset established for telecommunications service by the Federal Communication Commission and adjusted for exogenous factors;

(2) The commission shall approve a change to a maximum allowable price filed pursuant to paragraph (a) of subdivision (1) of this subsection within forty-five days of filing of notice by the local exchange telecommunications company. An incumbent local exchange telecommunications company shall file a tariff to reduce the rates charged for any service in any case in which the current rate exceeds the maximum allowable price established under this subsection.

(3) As a part of its request under paragraph (b) of subdivision (1) of this subsection, a company may seek commission approval to use a different productivity offset in lieu of the productivity offset established by the Federal Communication Commission. An adjustment under paragraph (b) of subdivision (1) of this subsection shall not be implemented if the commission determines, after notice and hearing to be conducted within forty-five days of the filing of the notice of a change to a maximum allowable price, that it is not in the public interest. In making such a determination, the commission shall consider the relationship of the proposed price of service to its cost and the impact of competition on the incumbent local exchange telecommunications company's intrastate revenues from regulated telecommunications services. Any adjustments for exogenous factors shall be allocated to the maximum allowable prices for exchange access and basic local telecommunications service in the same percentage as the revenues for such company bears to such company's total revenues from basic local, nonbasic and exchange access services for the preceding twelve months.

(4) For the purposes of this section, the term "exogenous factor" shall mean a cumulative impact on a local exchange telecommunications company's intrastate regulated revenue requirement of more than three percent, which is attributable to federal, state or local government laws, regulations or policies which change the revenue, expense or investment of the company, and the term "exogenous factor" shall not include the effect of competition on the revenue, expense or investment of the company nor shall the term include any assessment made under section 392.248.

(5) An incumbent local exchange telecommunications company may change the rates for its services, consistent with the provisions of section 392.200, but not to exceed the maximum allowable prices, by filing tariffs which shall be approved by the commission within [thirty] **twenty** days, provided that any such rate is not in excess of the maximum allowable price established for such service under this section.

5. Each telecommunications service of an incumbent local exchange telecommunications company shall be classified as competitive in any exchange in which at least one alternative local exchange telecommunications company has been certified under

section 392.455 and has provided basic local telecommunications service in that exchange for at least five years, unless the commission determines, after notice and a hearing, that effective competition does not exist in the exchange for such service. The commission shall, from time to time, on its own motion or motion by an incumbent local exchange telecommunications company, investigate the state of competition in each exchange where an alternative local exchange telecommunication company has been certified to provide local exchange telecommunications service and shall determine, no later than five years following the first certification of an alternative local exchange telecommunication company in such exchange, whether effective competition exists in the exchange for the various services of the incumbent local exchange telecommunications company. If the commission determines that effective competition exists in the exchange, the local exchange telecommunications company may thereafter adjust its rates for such competitive services upward or downward as it determines appropriate in its competitive environment. If the commission determines that effective competition does not exist in the exchange, the provisions of paragraph (c) of subdivision (2) of subsection 4 of section 392.200 and the maximum allowable prices established by the provisions of subsections 4 and 11 of this section shall continue to apply. The commission shall from time to time, but no less than every five years, review the state of competition in those exchanges where it has previously found the existence of effective competition, and if the commission determines, after hearing, that effective competition no longer exists for the incumbent local exchange telecommunications company in such exchange, it shall reimpose upon the incumbent local exchange telecommunications company, in such exchange, the provisions of paragraph (c) of subdivision (2) of subsection 4 of section 392.200 and the maximum allowable prices established by the provisions of subsections 4 and 11 of this section, and, in any such case, the maximum allowable prices established for the telecommunications services of such incumbent local exchange telecommunications company shall reflect all index adjustments which were or could have been filed from all preceding years since the company's maximum allowable prices were first adjusted pursuant to subsection 4 or 11 of this section.

6. Nothing in this section shall be interpreted to alter the commission's jurisdiction over quality and conditions of service or to relieve telecommunications companies from the obligation to comply with commission rules relating to minimum basic local and interexchange telecommunications service.

7. A company regulated under this section shall not be subject to regulation under subsection 1 of section 392.240.

8. An incumbent local exchange telecommunications company regulated under this section may reduce intrastate access rates, including carrier common line charges, subject to the provisions of subsection 9 of this section, to a level not to exceed one hundred fifty percent of the company's interstate rates for similar access services in effect as of December

thirty-first of the year preceding the year in which the company is first subject to regulation under this section. [Absent commission action under subsection 10 of this section,] An incumbent local exchange telecommunications company regulated under this section [shall have four years from the date the company becomes subject to regulation under this section to make the adjustments authorized] **is authorized to be able to make up to six annual adjustments as provided** under this subsection and subsection 9 of this section. Nothing in this subsection shall preclude an incumbent local exchange telecommunications company from establishing its intrastate access rates at a level lower than one hundred fifty percent of the company's interstate rates for similar access services in effect as of December thirty-first of the year preceding the year in which the company is first subject to regulation under this section.

9. Other provisions of this section to the contrary notwithstanding and no earlier than January 1, 1997, the commission shall allow an incumbent local exchange telecommunications company regulated under this section which reduces its intrastate access service rates pursuant to subsection 8 of this section to offset the revenue loss resulting from [the first year's] **each** access service rate reduction by increasing its monthly maximum allowable prices applicable to basic local exchange telecommunications services by an amount not to exceed one dollar fifty cents **per annual adjustment**. A large incumbent local exchange telecommunications company shall not increase its monthly rates applicable to basic local telecommunications service under this subsection unless it also reduces its rates for intraLATA interexchange telecommunications services by at least ten percent. [No later than one year after the date the incumbent local exchange telecommunications company becomes subject to regulation under this section, the commission shall complete an investigation of the cost justification for the reduction of intrastate access rates and the increase of maximum allowable prices for basic local telecommunications service. If the commission determines that the company's monthly maximum allowable average statewide prices for basic local telecommunications service after adjustment pursuant to this subsection will be equal to or less than the long run incremental cost, as defined in section 386.020, RSMo, of providing basic local telecommunications service and that the company's intrastate access rates after adjustment pursuant to this subsection will exceed the long run incremental cost, as defined in section 386.020, RSMo, of providing intrastate access services, the commission shall allow the company to offset the revenue loss resulting from the remaining three-quarters of the total needed to bring that company's intrastate access rates to one hundred fifty percent of the interstate level by increasing the company's monthly maximum allowable prices applicable to basic local telecommunications service by an amount not to exceed one dollar fifty cents on each of the next three anniversary dates thereafter; otherwise, the commission shall order the reduction of intrastate access rates and the increase of monthly maximum allowable prices for basic local telecommunications services

to be terminated at the levels the commission determines to be cost-justified.] The total revenue increase due to the increase to the monthly maximum allowable prices for basic local telecommunications service shall not exceed the total revenue loss resulting from the reduction to intrastate access service rates.

10. Any telecommunications company whose intrastate access costs are reduced pursuant to subsections 8 and 9 of this section **or pursuant to subsection 4 of section 392.405** shall decrease its rates for intrastate toll telecommunications service to flow through such reduced costs to its customers. The commission may permit a telecommunications company to defer a rate reduction required by this subdivision until such reductions, on a cumulative basis, reach a level that is practical to flow through to its customers.

11. The maximum allowable prices for nonbasic telecommunications services of a small, incumbent local exchange telecommunications company regulated under this section shall not be changed until twelve months after the date the company is subject to regulation under this section or, on an exchange-by-exchange basis, until an alternative local exchange telecommunications company is certified and providing basic local telecommunications service in such exchange, whichever is earlier. The maximum allowable prices for nonbasic telecommunications services of a large, incumbent local exchange telecommunications company regulated under this section shall not be changed until January 1, 1999, or on an exchange- by-exchange basis, until an alternative local exchange telecommunications company is certified and providing basic local telecommunications service in such exchange, whichever is earlier. Thereafter, the maximum allowable prices for nonbasic telecommunications services of an incumbent local exchange telecommunications company may be annually increased by up to eight percent for each of the following twelve-month periods upon providing notice to the commission and filing tariffs establishing the rates for such services in such exchanges at such maximum allowable prices. This subsection shall not preclude an incumbent local exchange telecommunications company from proposing new telecommunications services and establishing prices for such new services. An incumbent local exchange telecommunications company may change the rates for its services, consistent with the provisions of section 392.200, but not to exceed the maximum allowable prices, by filing tariffs which shall be approved by the commission within [thirty] **twenty** days, provided that any such rate is not in excess of the maximum allowable price established for such service under this section.

12. The commission shall permit an incumbent local exchange telecommunications company regulated under this section to determine and set its own depreciation rates which shall be used for all intrastate regulatory purposes. Provided, however, that such a determination is not binding on the commission in determining eligibility for or reimbursement under the universal service fund established under section 392.248.

**392.405. 1. The services, other than exchange access service, of a large**



incumbent local exchange telecommunications company shall be classified as competitive within an exchange if such company provides central office based broadband service within the exchange and at least three telecommunications companies are providing telecommunications service within the exchange. For purposes of this section, commercial mobile radio service providers shall be considered as telecommunications companies providing telecommunications service.

2. The commission shall approve tariffs designating all such services in an exchange as competitive within twenty days after a tariff filing by the large incumbent local exchange telecommunications company declaring such services as competitive pursuant to this section. Exchange access services of a large incumbent local exchange telecommunications company whose other services within an exchange are classified as competitive under this section shall be regulated pursuant to section 392.245.

3. A large, incumbent local exchange telecommunications company whose services within an exchange are classified as competitive pursuant to this section may thereafter adjust its rates for such competitive services upward or downward as it determines appropriate, consistent with subsections 2 through 5 of section 392.200, upon filing tariffs which shall be approved by the commission within the timelines identified in section 392.500.

4. If a large, incumbent local exchange telecommunications company whose services within an exchange are classified as competitive pursuant to this section increases its rates for residential basic local telecommunications service in that exchange during the first two years after receiving competitive classification pursuant to this section, such large incumbent local exchange telecommunications company shall also reduce its maximum allowable rates for exchange access service on a revenue neutral basis.